Supreme Court, U.S.
FILED
DEC 29 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-709

In the Supreme Court of the United States

OCTOBER TERM, 1986

HIROTOSHI YAMAMOTO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends that the Claims Court erred in dismissing, on grounds of res judicata, his refund suit that sought to challenge the minimum tax liability imposed upon him by a prior final decision of the Tax Court.

1. a. Petitioner reported substantial amounts of capital gains on his income tax returns for 1970 and 1971 without reporting any minimum tax liability pursuant to 26 U.S.C. (1970 ed.) 56. The Internal Revenue Service initially notified petitioner that the minimum tax was applicable to the determination of his income tax liability because of the large amount of capital gains. After final examination of the returns, however, the IRS concluded that much of the income reported as capital gains should be recharacterized as ordinary income. Based on this conclusion, the Commissioner sent petitioner a notice of deficiency asserting deficiencies of $5,058 for 1970 and $75,577 for 1971. Petitioner

then petitioned the United States Tax Court for a redetermination of his tax liabilities for those years. Pet. App. C2.

The litigation in the Tax Court focused on the parties' dispute over the correct tax treatment of petitioner's gain from the transfer of certain stock. The court rejected both the Commissioner's contention that the gain was ordinary income and petitioner's contention (contrary to the position that he had taken on his returns) that the gain was nonrecognition income under Section 351 of the Code.[1] Instead, the Tax Court concluded that the gain was taxable as capital gain, as originally reported by petitioner on his tax returns. *Yamamoto* v. *Commissioner*, 73 T.C. 946 (1980), aff'd, 672 F.2d 924 (9th Cir. 1982). See Pet. App. C2.

In order to "reflect * * * the effect of these conclusions [and various concessions by the parties] on asserted liabilities for minimum tax," the Tax Court stated that its decision would be entered under Tax Court Rule 155, which allows each party to submit its own computation of the resultant deficiency. 73 T.C. at 962. The Commissioner filed proposed computations showing a tax deficiency for 1970 in the amount of $3,042 and for 1971 in the amount of $23,854. Both computations reflected petitioner's liability for the minimum tax. Petitioner neither objected to the Commissioner's proposed computations nor filed any proposed computations of his own. The Tax Court entered its decision in the amounts submitted by the Commissioner. The court of appeals affirmed the Tax Court's decision. Pet. App. C2-C3.[2]

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[1]Unless otherwise noted, all statutory references are to the Internal Revenue Code (26 U.S.C.), as amended (the Code or I.R.C.).

[2]Petitioner challenged on appeal only the Tax Court's ruling that his gain on the transfer of stock had to be recognized. He did not challenge the Tax Court's acceptance of the Rule 155 computation submitted by the Commissioner.

b. After paying the tax assessed in accordance with the Tax Court's decision, together with accrued penalties and interest, petitioner filed suit for a refund in the United States Claims Court, disputing the imposition of minimum tax liability. The Claims Court originally dismissed the suit for failure to file an administrative refund claim. Petitioner then filed a refund claim with the IRS, which was denied, and returned to the Claims Court in the instant action. Pet. App. C3.

The Claims Court granted the government's motion for summary judgment and dismissed petitioner's complaint, holding that the doctrine of res judicata barred petitioner from litigating his claims because his income tax liabilities for 1970 and 1971 had been the subject of a prior Tax Court decision that had become final. Pet. App. C1-C7; 9 Cl. Ct. 207. The court of appeals affirmed in a one-line decision on the basis of the Claims Court's opinion (Pet. App. D; 795 F.2d 1018).

2. Petitioner contends (Pet. 3-4) that the Tax Court's decision as to his income tax liability for the tax years in question does not preclude relitigation of the minimum tax component of that liability in the instant refund suit. This contention apparently is based (1) on the fact that the Commissioner did not issue a new notice of deficiency addressed to the minimum tax question after the Tax Court held that the gain from the stock transaction should be treated as capital gain; and (2) on the assertion that petitioner did not receive judicial review of his minimum-tax arguments. This contention is wholly without merit.

When petitioner filed his Tax Court petition for redetermination of the deficiencies asserted in the notice of deficiency sent to him for 1970 and 1971, the Tax Court acquired exclusive jurisdiction to redetermine the correct amount of any deficiency or overpayment for those tax

years. See I.R.C. §§ 6214 and 6512. The Commissioner thereupon was barred from sending petitioner further notices of deficiency for the periods at issue. See I.R.C. § 6212(c). Pursuant to Section 6214 and Rule 155 of its Rules, the Tax Court redetermined petitioner's income tax deficiencies for 1970 and 1971, and it included in the computation of those deficiencies the minimum-tax liability occasioned by petitioner's receipt of capital gains.[3] The fact that petitioner, for whatever reason, did not challenge the minimum-tax aspect of the Tax Court's decision in that court or on direct appeal provides no basis for avoiding the res judicata effect of the Tax Court's decision. See *Commissioner* v. *Sunnen*, 333 U.S. 591, 597 (1948).[4]

Petitioner's reliance (Pet. 4) on *Thompson* v. *United States*, 430 F.2d 388 (5th Cir. 1970), cert. denied, 401 U.S. 940 (1971), is entirely misplaced. That case involved different tax years from those involved in the prior litigation, and hence it was quite clear that the first litigation had no res judicata effect that could bar the later suit. It is well established that each tax year is a separate cause of action. Thus, a final Tax Court decision with respect to liability for a

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[3]It is well established that minimum-tax liability is part of the income tax. See, *e.g.*, *Trainer* v. *United States*, 800 F.2d 1086 (Fed. Cir. 1986), petition for cert. pending, No. 86-904; *Ward* v. *United States*, 695 F.2d 1351, 1355 (10th Cir. 1982); *Graff* v. *Commissioner*, 74 T.C. 743, 765 (1980), aff'd, 673 F.2d 784 (5th Cir. 1982). See also *United States* v. *Darusmont*, 449 U.S. 292 (1981).

[4]In addition to holding correctly that the instant suit was barred by res judicata, the Claims Court went on to note that petitioner "had advance notice of the minimum tax issue" and that "the Tax Court's procedures [were] entirely appropriate in the instant case" (Pet. App. C6). Thus, there can be no suggestion that petitioner is the victim of some procedural trap for the unwary. He had every opportunity to raise his minimum-tax contentions at the appropriate time in the appropriate forum, and there is no reason to provide him now with the opportunity to institute a new round of litigation involving closed tax years.

given year, under basic res judicata principles, bars further litigation as to that tax year, with respect both to issues that were actually raised and to issues that could have been presented but were not. See *Commissioner* v. *Sunnen*, 333 U.S. at 598-599.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FRIED
Solicitor General

DECEMBER 1986